



H.R. 1338 – Paycheck Fairness Act

EXECUTIVE SUMMARY

H.R. 1338 amends the Fair Labor Standards Act of 1938 (Equal Pay Act) to add nonretaliation requirements, increase penalties, and authorize the Secretary of Labor to seek additional compensatory or punitive damages, and includes other wage-related provisions. H.R. 1338 also authorizes \$15 million for the purposes of the Act. The President has threatened to veto the bill.

The debate over “equal pay” is grounded in data that shows women are generally paid less than men for comparable jobs, although the pay gap has narrowed considerably over the last 48 years. The primary pieces of legislation pertaining to workplace sex discrimination is the 1963 Equal Pay Act and Title VII of the Civil Rights Act, which prohibits wage differentials between men and women for equal work on jobs “performed under similar working conditions” and requiring “equal skill, effort, and responsibility.”

H.R. 1338 is expected to be considered on the floor of the House on July 31, 2008 pursuant to a structured rule.

FLOOR SITUATION

H.R. 1338 is expected to be considered on the floor of the House on July 31, 2008 pursuant to a structured rule. The rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Member of the Committee on Education and Labor;
- Waives all points of order against consideration of the bill except for clauses 9 (regarding earmarks) and 10 (regarding PAYGO) of rule XXI;
- Provides that the amendment in the nature of a substitute recommended by the Committee on Education and Labor, now printed in the bill, shall be considered as an original bill for the purpose of amendment and shall be considered as read;
- Waives all points of order against the amendment in the nature of a substitute except for clauses 10 (regarding PAYGO) of rule XXI. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure);
- No amendments shall be in order except those amendments printed in the Rules Committee report accompanying the resolution;
- Provides that the amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole;
- Waives all points of order against the amendments printed in the report except for clauses 9 (regarding earmarks) and 10 (regarding PAYGO) of rule XXI;
- Provides one motion to recommit with or without instructions; and
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

This legislation was introduced by Representative Rosa DeLauro (D-CT) on March 6, 2007. The Committee on Education and Labor ordered the bill to be reported, as amended, on July 24, 2008, by a party line vote of 26-17.

BACKGROUND



LEGISLATIVE DIGEST

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The debate over “equal pay” is grounded in data that shows women are generally paid less than men for comparable jobs, although the pay gap has narrowed considerably over the last 48 years. Among women with a “strong commitment to the labor force,” the 2006 median annual earnings were \$32,515, while men earned \$42,261, according to the U.S. Census Bureau.

Explanations for this labor market differential tend to take either a supply- or demand-focused approach, corresponding to distinct policy remedies. The supply-side position argues that wage disparity is due to differences in the level of educational attainment, job characteristics, and hours worked. Those who take the supply-oriented approach argue that wage disparities will correct themselves over time. Since women in the workplace are becoming more demographically similar to men, they believe government intervention is unwarranted. Demand-focused theorists argue instead that sex-based discrimination is responsible for the remaining discrepancy in wages after accounting for labor market qualifications. Their prescription is increased government enforcement of anti-discrimination laws, heightened workplace monitoring, arbitration of wage practices, and provisioning federal funds for training programs targeted towards enabling women to enter high-paying, nontraditional employment sectors.

The primary pieces of legislation pertaining to workplace sex discrimination are the 1963 Equal Pay Act and the Civil Rights Act which prohibit wage differentials between men and women for equal work on jobs “performed under similar working conditions” and requiring “equal skill, effort, and responsibility.” The Equal Pay Act does, however, allow for differentials based on seniority, merit, or disparities in the quality or quantity of production.

Note: Rep. Cathy McMorris Rodgers (R-WA) offered an amendment to give private sector workers the flexibility to access comp time in lieu of paid overtime. Democrats did not allow a vote on the motion. Rep. Tom Price (R-GA) offered two amendments which would limit excessive trial lawyer fees and avert unintended job loss due to litigation traps. The Democrat majority defeated these amendments. Finally, Ranking Member McKeon (R-CA) offered an amendment to recognize the role played by high gas prices in diminishing the value of workers' wages. The Democrats prevented a vote on this measure.

SUMMARY

Enforcement of Equal Pay Requirements: H.R. 1338 amends the Fair Labor Standards Act of 1938 (Equal Pay Act) to add nonretaliation requirements, increase penalties, and authorize the Secretary of Labor to seek additional compensatory or punitive damages.

The bill requires that non-gender reasons for any gender-based wage disparity have a “business justification.” An employer must demonstrate that the disparity is based on a factor other than gender, such as education, training, or experience.

Note: According Education and Labor Committee Republicans: “H.R. 1338 dramatically scales back an employer's ability to defend itself from claims of ‘pay discrimination’ where disparities arise from wholly lawful business decisions... H.R. 1388 strictly limits an employer's ability to defend pay differentials which are accounted for by reasons wholly unrelated to an employee's sex... Currently, under the Fair Labor Standards Act, plaintiffs may sue on behalf of themselves and those similarly situated, and pursue a collective action. To ensure that these suits are brought on the basis of merit--and by those who wish to pursue them--employees must ‘opt in’ to these collective suits. H.R. 1388 would reverse that presumption and eliminate those safeguards, instead deeming all potential class members to be joined to a suit, and placing the affirmative burden on these plaintiffs--who may not even know of the suit's existence--to opt out of a claim.” [\(Additional Views, House Report 110-783\)](#)



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Training: This bill requires the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs to train EEOC employees and relevant individuals and entities on wage discrimination issues.

Research, Education, and Outreach: H.R. 1338 also authorizes the Secretary of Labor to make competitive grants to public agencies for negotiation skills training programs for girls and women. The Secretary must report to Congress within one year on this grant program.

The Secretary must provide studies, information, a national summit, and guidelines, awards, and assistance for employer evaluations of job categories based on objective criteria. H.R. 1338 also establishes the Secretary of Labor's National Award for Pay Equity in the Workplace. The award will go to an employer that has "made substantial effort to eliminate pay disparities between men and women."

Pay Equity Programs and Data Collection: This bill amends the Civil Rights Act of 1964 to require the EEOC to collect certain pay information. The Commissioner of Labor Statistics will collect data on female workers in the Current Employment Statistics survey. H.R. 1338 directs the Office of Federal Contract Compliance Programs to use certain methods in investigating compensation discrimination and to enforce pay equity. The Secretary must make information publicly available on compensation discrimination.

Authorization of Appropriations: H.R. 1338 authorizes \$15 million for the purposes of the Act over the 2009-2013 period.

ADDITIONAL VIEWS

Ranking Member Howard "Buck" McKeon (R-CA): "This bill isn't about paycheck fairness. It's already against federal law to discriminate, in pay or other employment practices, on the basis of sex. And rightfully so...This bill is about making it easier for trial lawyers to cash in under the Equal Pay Act, and making it more difficult for employers to make legitimate employment decisions based on factors other than sex."

Statement of Administration Policy: "The bill would unjustifiably amend the Equal Pay Act (EPA) to allow for, among other things, unlimited compensatory and punitive damages, even when a disparity in pay was unintentional. It also would encourage discrimination claims to be made based on factors unrelated to actual pay discrimination by allowing pay comparisons between potentially different labor markets. In addition, it would require the Department of Labor (DOL) to replace its successful approach to detecting pay discrimination with a failed methodology that was abandoned because it had a 93 percent false positive rate. Thus, if H.R. 1338 were presented to the President, his senior advisors would recommend that he veto the bill."

[\(Statement of Administration Policy, 7/30/08\)](#)

AMENDMENTS MADE IN ORDER

1. Rep. Melissa Bean (D-IL): Would strike section 3(b); "Application of Provisions," from the bill.
2. Rep. Tom Price (R-GA): Would direct the Secretary of labor to study and report back to Congress within 90 days the effect of the Equal Pay Act amendments contained in the bill (section 3) on employers' ability to recruit and hire employees regardless of gender; the effective date of these amendments is delayed pending the Secretary's report. If the Secretary finds that these amendments are likely to significantly hinder employer's ability to hire and recruit employees regardless of gender, they do not go into effect.
3. Rep. Jason Altmire (D-PA): Would delay the effective date of the bill by six months from the time of enactment. The amendment requires the Department of Labor to educate small businesses about what is required under law and assist them with compliance.



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4. Rep. Gabrielle Giffords (D-AZ): Would clarify that a plaintiff must show intent (malice or reckless indifference) to recover punitive damages.
5. Rep. Don Cazayouz (D-LA): Would clarify that nothing in the Paycheck Fairness Act would affect the obligation of employers and employees to fully comply with all the applicable immigration laws.
6. Rep. Jeff Flake (R-AZ): Would prohibit the grant program created by the Paycheck Fairness Act from being used for Congressional earmarks.

COST

The Congressional Budget Office (CBO) estimates implementing H.R. 1338 “would cost \$15 million over the 2009-2013 period, assuming appropriation of the authorized amounts.”

[Full CBO Cost Estimate](#)

STAFF CONTACT

For questions or further information contact Adam Hepburn at 6-2302.